

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Mitchell Communications, Inc.	)	File No. EB-02-NF-039
	)	NAL/Acct. No. 200232640003
Licensee of Station WDVA(AM)	)	FRN 0007-0270-63
Danville, Virginia	)	

**FORFEITURE ORDER**

**Adopted: November 5, 2002****Released: November 7, 2002**

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Forfeiture Order* ("Order"), we issue a monetary forfeiture in the amount of thirteen thousand dollars (\$13,000) to Mitchell Communications, Inc. ("Mitchell"), licensee of Station WDVA(AM), Danville, Virginia, for willful and repeated violation of Section 17.4(a) of the Commission's Rules ("Rules") and willful violation of Section 73.49 of the Rules.<sup>1</sup> The noted violations involve Mitchell's failure to register four antenna structures used as an antenna array for WDVA(AM) and failure to enclose its antenna structures within effective locked fences or other enclosures.

2. On June 10, 2002, the Commission's Norfolk, Virginia Resident Agent Office ("Norfolk Office") issued a *Notice of Apparent Liability for Forfeiture* ("NAL") to Mitchell for a forfeiture in the amount of thirteen thousand dollars (\$13,000) for the above noted violations.<sup>2</sup> Mitchell filed a response to the NAL on July 8, 2002.

**II. BACKGROUND**

3. On August 8, 2000, an agent from the Norfolk Office inspected WDVA(AM) and determined that the four antenna structures used as part of an antenna array for WDVA(AM) were not registered. On March 20, 2001, the Norfolk Office issued an NAL finding Mitchell apparently liable for a forfeiture in the amount of \$3,000 for failure to register the four antenna structures in willful violation of Section 17.4(a) of the Rules.<sup>3</sup> The Enforcement Bureau issued a *Forfeiture Order* assessing a \$3,000

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<sup>1</sup> 47 C.F.R. §§ 17.4(a) and 73.49.

<sup>2</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200232640003 (Enf. Bur., Norfolk Office, released June 10, 2002).

<sup>3</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 20013264003 (Enf. Bur., Norfolk Office, released March 20, 2001).

forfeiture against Mitchell for this violation on July 6, 2001.<sup>4</sup> Mitchell paid the forfeiture in full on August 8, 2001.

4. On March 26, 2002, in response to a complaint, an agent from the Norfolk Office inspected WDVA(AM). The agent determined that the four antenna structures used as part of antenna array for WDVA(AM) were still not registered with the Commission. The agent also observed that the fences surrounding the four antenna structures were all unlocked. Mitchell's president, C. G. Hairston, told the agent that he had hired someone to register the towers, but provided no explanation as to why the fences were unlocked. On May 3, 2002, the agent searched the Commission's antenna structure registration database and determined that Mitchell's antenna structures were still not registered.

5. On June 10, 2002, the Norfolk Office issued an *NAL* for a \$13,000 forfeiture to Mitchell for failure to register its antenna structures in willful and repeated violation of Section 17.4(a) of the Rules and failure to enclose its antenna structures within an effective locked fence in willful violation of Section 73.49 of the Rules. The Norfolk Office noted that the base forfeiture amount for failure to register an antenna structure is \$3,000 but adjusted the base amount for this violation upward to \$6,000 because Mitchell's failure to register these antenna structures was a repeated violation. On July 8, 2002, Mitchell filed a response to the *NAL* in which it seeks cancellation of the forfeiture. Although Mitchell acknowledges that the towers are not registered, it asserts that its failure to register the towers was not intentional or willful. Mitchell asserts that it only recently learned that registration of the structures was required, that it hired an expert to prepare and submit applications for antenna structure registration to the FCC, and that the forms were submitted to the FCC on or about May 11, 2001. However, the FCC returned these forms to Mitchell because Mitchell had not filed the appropriate notification to the Federal Aviation Administration ("FAA") and received a "no hazard" determination. Mitchell states that it then engaged an FAA expert who submitted the appropriate documents to the FAA, but the FAA has not yet issued an aeronautical study number. With respect to the fencing violation, Mitchell admits that the fences were not locked on the date of inspection. However, it asserts that it truly believed that there were locks on the gates, that there is no evidence that the fences were unlocked on any other day, and that locks were installed on the date of inspection and have been in place since that date. Therefore, Mitchell argues that there was no willful or repeated violation of Section 73.49.

### III. DISCUSSION

6. The forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended, ("Act"),<sup>5</sup> Section 1.80 of the Rules,<sup>6</sup> and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Policy Statement*"). In examining Mitchell's response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>7</sup>

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<sup>4</sup> *Mitchell Communications, Inc.*, 16 FCC Rcd 13186 (Enf. Bur. 2001).

<sup>5</sup> 47 U.S.C. § 503(b).

<sup>6</sup> 47 C.F.R. § 1.80.

<sup>7</sup> 47 U.S.C. § 503(b)(2)(D).

7. Section 17.4(a) of the Rules provides that owners of existing antenna structures that require notification to the FAA register the structures with the FCC. Mitchell's four antenna structures were more than 200 feet in height and therefore require notification to the FAA and registration with the FCC. Mitchell admits that the towers are not registered. Accordingly, we find that Mitchell's failure to register these towers is a violation of Section 17.4(a).

8. Mitchell argues that the forfeiture proposed for this violation should be cancelled because its failure to register the towers was not willful or intentional. Section 503(b) of the Act gives the Commission authority to assess a forfeiture penalty against any person if the Commission determines that the person has "willfully or repeatedly" failed to comply with the provisions of the Act or with any rule, regulation or order issued by the Commission. The term "willful" as employed in Section 503(b) of the Act does not require a finding that the rule violation was intentional or that the violator was aware that it was committing a rule violation.<sup>8</sup> While Mitchell states that it only recently learned that registration of the towers was required, we note that the rules requiring registration of antenna structures have been in effect since 1996 and that the Commission has repeatedly advised antenna structure owners that all existing antenna structures subject to our rules must be registered *immediately* or the owners face a monetary forfeiture or other enforcement action.<sup>9</sup> Licensees are expected to know and comply with the Commission's rules.<sup>10</sup> Furthermore, as noted above, Mitchell was previously assessed a forfeiture for failure to register its towers. Mitchell also claims that it filed the appropriate documents with the FAA, but the FAA has not yet issued an aeronautical study number. However, Mitchell did not provide any documentation to support this claim. Moreover, Enforcement Bureau staff contacted the FAA's Eastern Regional Office to confirm whether Mitchell filed the required notification to the FAA and the FAA was unable to find any record of a filing by Mitchell for the four towers at issue. Accordingly, we conclude that Mitchell's failure to register the towers was a willful violation within the meaning of Section 503(b). As explained in the *NAL*, the violation is also repeated because the Commission previously assessed forfeiture against Mitchell for its failure to register these towers; the violation continued through at least May 3, 2002.

9. Section 73.49 of the Rules provides that antenna towers having radio frequency potential at the base must be enclosed within effective locked fences or other enclosures. Mitchell does not dispute that at the time of the inspection, the fences surrounding all four of its towers were not locked. Accordingly, we find that Mitchell violated Section 73.49 of the Rules by failing to enclose its four antenna towers within effective locked fences. We disagree with Mitchell's assertion that this violation

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<sup>8</sup> *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991); *see also Nan Tan Computer Co.*, 9 FCC Rcd 3092 (1994) ("[f]or a violation to be willful, it is not required that the violator also intend to violate a requirement of the Commission or be aware that it is committing a violation").

<sup>9</sup> Antenna structure owners were required to register existing antenna structures during a two-year filing period between July 1, 1996 and June 30, 1998. *Streamlining the Commission's Antenna Structure Clearance Procedure and Revision of Part 17 of the Commission's Rules Concerning Construction, Marking and Lighting of Antenna Structures*, 11 FCC Rcd 4272, 4281 (1995). Subsequent to the expiration of the filing period, the Commission staff issued a Public Notice warning antenna structure owners to register any unregistered antenna structures subject to our requirements immediately or face possible monetary forfeitures or other enforcement action. *Public Notice, "No-Tolerance Policy Adopted for Unregistered Antenna Structures,"* 1999 WL 10060 (WTB rel. January 13, 1999).

<sup>10</sup> *Sitka Broadcasting Company, Inc.*, 70 FCC 2d 2375, 2378 (1979), *citing Lowndes County Broadcasting Company*, 23 FCC 2d 91 (1970) and *Emporium Broadcasting Company*, 23 FCC 2d 868 (1970).

was not willful. Although Mitchell states that it truly believed that there were locks on the fences, it offers no explanation why there were no locks on the fences at the time of the inspection, nor does it provide evidence or even assert that it periodically inspected the fences to ensure that they were locked. Thus, we conclude that Mitchell's violation of Section 73.49 was willful.<sup>11</sup> Finally, while Mitchell submits that it installed locks on the fences on the date of the inspection and that these locks have been in place since that date, the Commission has repeatedly stated that remedial actions taken to correct a violation are not mitigating factors warranting reduction of a forfeiture.<sup>12</sup>

10. We have examined Mitchell's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Policy Statement* as well. As a result of our review, we conclude that Mitchell willfully and repeatedly violated Section 17.4(a) of the Rules and willfully violated Section 73.49 of the Rules, and we find no basis for canceling or reducing the \$13,000 forfeiture proposed for these violations.

#### IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to Section 503 of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,<sup>13</sup> Mitchell Communications, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of thirteen thousand dollars (\$13,000) for willful and repeated violation of Section 17.4(a) of the Rules and willful violation of Section 73.49 of the Rules.

12. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>14</sup> Payment may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should reference NAL/Acct. No. 200232640003 and FRN 0007-0270-63. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>15</sup>

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<sup>11</sup> Because the *NAL* did not find that Mitchell violated Section 73.49 repeatedly, we need not address Mitchell's claim that its violation of Section 73.49 was not repeated.

<sup>12</sup> See *Station KGVV, Inc.*, 42 FCC 2d 258, 259 (1973).

<sup>13</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

<sup>14</sup> 47 U.S.C. § 504(a).

<sup>15</sup> See 47 C.F.R. § 1.1914.

13. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by first class and certified mail return receipt requested, to C. G. Hairston, President, Mitchell Communications, Inc., 130 Lexington Avenue, Danville, Virginia 24514.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau